IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07..02..2006

C O R A M

The Honourable Mr. A.P. SHAH, CHIEF JUSTICE
and
The Honourable Mrs. Justice PRABHA SRIDEVAN

Writ Appeal Nos.2699, 2700, 2703, 2704 & 2706 of 2004

The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, .. Appellant in all
Chennai - 600 002. the Writ Appeals

Versus

1. Tamil Nadu Electricity Board Pensioners
Association (Regd. No.121/97),
Chennai Region, rep. by its
Secretary G. Manian,
No.15, Plot No.1468,
"H" Block, 21st Street,
Anna Nagar West, Chennai-40.

2. The Government of Tamil Nadu,
rep. by its Secretary,
Energy Department, .. Respondents in
Fort St. George, Chennai-9. W.A. No.2699 of 2004

.....

1. C.V. Raghavan
2. V. Krishnamurthy
3. M.S. Sugavanam
4. C.R. Narayana Kurup
5. P. Krishnasamy
6. M.P. Vasudevan
7. M. Madhavan
8. E.V. Cyriac
9. V. Rukmani (Family pensioner)

10. The Secretary to Government,
Energy Department, .. Respondents in
Fort St. George, Chennai-9. W.A. No.2700 of 2004

.....

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1. Thoothukudi District Electricity Board
Pensioners' Association (Regn. No.51/98),
rep. by its General Secretary
A. Subramanian (Pottu)
No.105-A, East Ranganathapuram Street,
Thoothukudi-628 002.

2. Government of Tamil Nadu,
rep. by its Secretary,
Energy Department, .. Respondents in
Fort St. George, Chennai-9. W.A. No.2703 of 2004

.....

1. V. Raghunathan
2. R.V. Duraisamy
3. Syed Abdulgani
4. M. Velmurugan
5. S. Swedaranyam
6. S. Ayyaswamy
7. K. Badrinarayanan
8. A.M. Kannayan
9. R. Natarajan
10. S. Govindan
11. N. Vedavyasam
12. D. Ramanathan
13. S. Ramadoss
14. S. Viswanathan
15. V.R. Masilamani
16. A.G. Subramaniam
17. T.V. Arumugam
18. M.R. Kothandaraman
19. A. Tyagarajan
20. N. Subramaniam
21. R. Seshadri
22. V. Natarajan
23. S. Kanagasundaram
24. R. Subramanian
25. V. Narasimhan
26. L. Kalyanasundaram
27. N. Raghavendra Rao
28. R.M. Arumugam
29. A.G. Menon
30. M.S.V. Raghavan
31. N.R. Srinivasan
32. V. Swaminathan
33. N. Ganesan
34. C.N. Parameswaran
35. P. Sethumathavan

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36. V. Chandrasekaran
37. C.K. Sundaresan
38. S.R. Ramakrishnan
39. K. Thiruvanai
40. V.S. Gopala Rao
41. D.S. Arunachalam
42. S. Govindarajan
43. M. Kuppusamy
44. P.S. Subbanarasimhan
45. P. Krishnamurthy
46. S. Kailasam
47. M. Krishnan
48. M. Sankarapandian
49. S. Seetharaman
50. P.G. Sundararajulu
51. P.C. Subramaniyam
52. S. Chandrasekaran
53. N.S. Abdul Latiff
54. K. Narayanan
55. S. Sowrirajan
56. A. Thangavelu
57. M.S. Sheik Ibrahim
58. T.A. Ramasamy
59. M.R. Varadarajan
60. I. Sadasivam
61. K.T. Ramasamy
62. S. Bhoominathan
63. S. Narasimhan
64. T.P. Veerappan
65. Y.P. Siva Subramaniam
66. N.V. Balakrishnan
67. M. Krishnamurthy
68. Sri. V. Nagarajan
69. Sri V. Kalahastheeswaran
70. Sri. A.V. Swaminathan
71. Sri. T.A.D. Samy
72. P.K. Kunhi Moosa
73. N.S. Desigan
74. K.S. Ramiah
75. S. Padmanaban
76. R. Duraisamy
77. Sri. K.A. Ahamaed Basha
78. K.V. Thyagarajan
79. V. Kamalam
80. S. Srinivasan
81. E. Sundaram
82. K. Ragavan
83. R. Venkatesan
84. T.P. Rathinasamy

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85. S. Manian
86. K.R. Ramanujam
87. S. Sriniavasan
88. M. Kalyana Sundaram
89. K. Sathia Murthy
90. S. Sheik Babu
91. M.A. Perumal
92. N.A. Krishnamurthy
93. P.S. Srinivasan
94. V. Venkateswaran
95. M.V. Venugopalan
96. C. Kuppusamy
97. K.S. Jayaraman
98. A.V. Krishnan
99. R. Subramaniam
100. S. Muthuraman
101. S. Abdul Kadar
102. Padma
103. G. Saroja
104. R. Rahima Bi
105. K. Manikkammal
106. R. Govindammal
107. Girija
108. Ganga

109. The Secretary to Government, Energy Department, Fort St. George, Chennai-9. .. Respondents in W.A. No.2704 of 2004

.....

1. Federation of Tamil Nadu Electricity Board Pensioners' Association, Chennai.

2. Tamil Nadu Electricity Board Retired Employees' Progressive Union, Dindigul.

3. State of Tamil Nadu, through its Secretary, Energy Department, Fort St. George, Chennai-9. .. Respondents in W.A. No.2706 of 2004

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Prayer : Writ Appeals filed under Clause 15 of the Letters Patent against the order of a learned single Judge of this Court dated 17.3.2004 made in W.P. Nos.13007, 10561 of 2003, 18098 of 2001, 3415 and 16912 of 2003 respectively.

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For Appellants :Mr. A.L. Somayaji, Senior Counsel for
Mr. V. Radhakrishnan.

For Respondents:Mr. S.V. Jayaraman, Senior Counsel for
Mr. A.L. Namasivayam
(For R1 - Pensioners' Association)

Mr. Vijay Narayanan, Senior Counsel for
Mr. R. Parthiban (For R2-Individual Pensioners)

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J U D G M E N T

Three Pensioners' Associations and some individual pensioners' prayed for implementation of G.O. Ms. Nos.272 and 273, Finance (Pension) Department dated 15.6.1998 to the pensioners of the Tamil Nadu Electricity Board. Writ Petitions were filed for issuing a mandamus directing the Electricity Board to give effect to the said G.Os. by passing necessary proceedings and by settling the arrears of the pensionary benefits.

2. On behalf of the writ petitioners, reliance was placed on Regulation 9 of the Tamil Nadu Electricity Board Liberalised Pension Regulations, 1960 and the Settlement arrived at between the Electricity Board and its workmen, according to which it was agreed that the revised Pension Scheme of the Government of Tamil Nadu and any amendments made thereon from time to time would be applied to the pensioners of the Tamil Nadu Electricity Board. The pensioners were originally employed in the Electricity Department of the Government of Tamil Nadu. On the formation of the Tamil Nadu Electricity Board with effect from 1.7.1957, the employees were absorbed in the Electricity Board and according to the petitioners, since no separate pension rules were framed by the Electricity Board for its employees, the Government of Tamil Nadu Pension Rules are adopted and made applicable to the pensioners of the Electricity Board, and as and when concessions are given by the Government of Tamil Nadu for its pensioners, those benefits have been extended to the pensioners of the Electricity Board also. According to them, by the Board's Proceedings dated 29.6.1979, the Electricity Board has delegated to the Chairman, the powers to adopt the Government Orders in respect of pension irrespective of monetary commitments. In the year 1986, by G.O. Ms. No.371, orders were issued to treat the Dearness Allowance (DA) and Additional Dearness Allowance (ADA) sanctioned upto 30.9.1987 as Dearness Pay (DP) for the purpose of calculation of pensionary benefits in respect of those who retired or died on or after 1.10.1987. Some of the Government

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pensioners moved the Tamil Nadu Administrative Tribunal for a direction to grant this concession also to those pensioners who had retired prior to 1.10.1987. This prayer was granted. The Government filed a S.L.P. against the order of the Tribunal, which was dismissed, as also the review petition filed by the Government. Thereafter, G.O. Ms. No.272, Finance (Pension) dated 15.6.1998 was issued, treating the Dearness Allowance and the Additional Dearness Allowance sanctioned from time to time and actually drawn, as Dearness Pay for calculation of pensionary benefits, to those who retired or died during the period between 1.4.1979 and 30.9.1987 and to those persons who retired from 1.10.1987 to 30.6.1988. The grievance of the petitioners is that when the Electricity Board had invariably followed all the Government Orders issued by the Government of Tamil Nadu with regard to revision of pensionary benefits, the non-adoption of G.O. Ms. Nos.272 and 273 dated 15.6.1998 to the pensioners of the Electricity Board, was unjustified and arbitrary. According to them, the assurance, based on which all those pensioners had originally agreed to opt to serve the Electricity Board when Government personnel were transferred from the erstwhile Electricity Department to the Electricity Board, is now being breached. The learned single Judge allowed the writ petitions. So, the Electricity Board has filed these appeals.

3. Mr. A.L. Somayaji, learned Additional Advocate General appearing for the appellant-Tamil Nadu Electricity Board would submit that the Electricity Board is not bound to implement and introduce for its employees all the concessions granted by the Government of Tamil Nadu to its employees. According to him, it is for the Board to decide whether they should follow the orders passed by the Government in pension and pensionary matters. It was submitted that even assuming that hitherto the Electricity Board had followed the Government whenever the Government granted concessions to its pensioners, it would not automatically follow that even when the situation warranted, the Board could not exercise its power not to introduce the concessions to its pensioners. According to him, in addition to the wage revisions or other benefits granted to the Electricity Board, in view of certain Government Orders granting concessions to its employees, the Electricity Board has beneficially revised the pension of its employees under various Board Proceedings and therefore, the Tamil Nadu Electricity Board pensioners are actually drawing a pension higher than that of the Government pensioners. Learned Additional Advocate General further submitted that the letter referred to by the petitioners, under which power was delegated to the Chairman to adopt Government Orders in respect of pension irrespective of monetary commitments does not mean that every time a Government Order is issued, it should be adopted. It only means that the power to adopt Government Orders is unfettered by

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the extent of financial implications. It was also pointed out that it is not correct to state that till now, the Electricity Board has adopted automatically and without any ado, the Government Orders and for the first time, the Board is reluctant to issue an order in line with G.O. Ms. Nos.272 and 273. Instances were pointed out to show that every time, the Electricity Board had taken an independent decision with regard to this. It was also submitted that the Transitory Regulations applicable to pensioners made it clear that the Pension Rules applicable to Government pensioners would also apply to the Board's pensioners only until the Board framed its own regulations. Thereafter, the applicability would depend on whether there is inconsistency with the Government Rules. Finally, it was submitted that if the order in the writ petitions is allowed to stand, it will impose an impossible financial burden on the Electricity Board.

4. The decision in (2005) 8 S.C.C. 729 [Central Organisation of Tamil Nadu Electricity Employees vs. T.N.E.B.] was referred to, in support of the case of the Electricity Board that straight away, there cannot be any wholesale importation of the provisions of the Pension Rules applicable to the State Government pensioners to the pensioners of the Electricity Board via the vehicle of the saving clause, Regulation 9. The Supreme Court answered this question in the negative and this was relied on by the learned Additional Advocate General to show that the Supreme Court has held that the provisions of the Pension Rules cannot be automatically adopted, relying mainly on Regulation 9. So, in the instant case also, the benefits of G.O. Ms. Nos.272 and 273 cannot be granted automatically to the writ petitioners. Reliance was also placed on (2005) 6 S.C.C. 754 [State of Punjab & Others vs. Amar Nathy Goyal & Others], where the Supreme Court considered the question of financial implications.

5. Mr. S.V. Jayaraman and Mr. Vijay Narayanan, learned senior counsel appearing for the pensioners/respondents submitted that Regulation 9 required the Board to adopt all the Government Orders issued from time to time for the benefit of the pensioners. According to them, the decision in (2005) 8 S.C.C. 729 (supra) is actually in their favour. In that case, the Supreme Court held that the Electricity Board cannot introduce something which would erode the benefits enjoyed by the employees merely by adopting the Government Rules. According to them, the decision in fact clearly states that for these petitioners, the benefits that they would have been entitled to if they had continued as Government Servants, are clearly protected and that is why Regulation 9 clearly provides that the said Regulation will be in addition to and not in derogation of the provisions of the Tamil Nadu Pension Rules. According to them, the mandamus

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was rightly issued because the Board was bound to implement the Government Orders in question.

6. When the Madras State Electricity Board, as it then was, was formed, the Government examined the transfer of personnel of the Electricity Department. The persons who were willing to opt to serve the Board were transferred from 1.7.1957 without any lien in Government service. By the said Government Order, namely G.O. Ms. No.538 dated 25.2.1958, the Electricity Board was required to frame regulations for its staff under Section 79(c) of the Electricity Supply Act, 1958, "In such a way as not to prejudicially affect the interest of the staff to be absorbed into its service" and to give option to the staff so transferred to continue to enjoy the service conditions under the Government, whenever any change thereof is given effect to by the Board. On and from 1.7.1957, the personnel of the Electricity Department who had opted to serve under the Madras State Electricity Board "Ceased to be governed by the conditions of service applicable to them in pursuance of the rules and orders made by the Government". On 26.4.1958, by Proceedings No.445, Transitory Regulations were framed. These Regulations were to be applicable to the staff of the Government Electricity Department till corresponding rules and regulations are framed by the Board under Section 79(c) of the Electricity Supply Act, 1958. The relevant regulations are extracted below :

> "(1) The said staff shall continue to be governed by the same service rules and regulations, as were applicable to them under the Government of Madras prior to the 1st July, 1957, until corresponding service rules and regulations are framed by the Board, under sub-section (c) of Section 79 of the Electricity (Supply) Act, 1948 (Central Act LIV of 1948).
>
> (2) The said staff who were in Government service till 30.6.57 and who have opted to serve under the Board from 1.7.57, shall continue to enjoy the service conditions under the Government, whenever any change thereof is given effect to by the Board.
>
> (3) All orders passed by the Government of Madras in relation to the said staff, on and after the 1st July 1957, shall be deemed to be lawful orders passed by the Board and shall have effect accordingly."

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7. In the year 1995, the Electricity Board amended Regulation 9 in order to follow the provisions of the Pension Rules of the Government of Tamil Nadu and the amended Regulation 9 read as follows :

> "9. SAVING
>
> (i) No provision in the Tamil Nadu Pension Rules and Tamil Nadu Pension Rules, 1978 shall, so far as it is inconsistent with any of the provisions of these regulations have any effect.
>
> (ii) Save as otherwise provided in these regulations, the provisions in these regulations shall be in addition to and not in derogation of the provisions in the Tamil Nadu Pension Rules, and Tamil Nadu Pension Rules, 1978, as amended from time to time by the Government of Tamil Nadu."

It is evident from the materials on record that the Board has been more or less, entirely following the Government Orders which have been periodically issued. According to the pensioners, the Board has no option but to apply without any deviation, the benefits granted by the Government for its pensioners.

8. The decision in (2005) 8 S.C.C. 729 (supra) lays down that the Board cannot straight away import wholesale, the provisions of the Pension Rules applicable to the State Government employees via the vehicle of the saving clause, Regulation 9. The following paragraphs are extracted from the said judgment since it gives us a historical overview of the Pension Regulations as well as its implications :

> "35. This case really turns on the interpretation of the Pension Regulations, particularly Regulation 9 of the 1960 Regulations. In considering the import of Regulation 9 of the 1960 Regulations (amended on 17-2-1995) a historical overview is crucial. After the constitution of the Board in the year 1957, a set of employees, the erstwhile State Government servants were taken over in the employment of the Board. They were governed by the Civil Service Regulations inter alia with regard to their pensionary benefits.
>
> 36. Thus, when the 1960 Regulations were brought into force on 1-7-1960, the Board had in its employment the erstwhile Tamil Nadu Government servants as well as employees directly recruited by it. A saving clause was

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necessary in order to ensure that the erstwhile Tamil Nadu Government servants (who were taken over into the service of the Board) were not adversely affected by framing of the Regulations. Consequently, a saving clause was introduced, vide Regulation 9.

37. This saving clause (as it stood before the amendment of 17-2-1995) was in two parts: clause (i) ensured that no provision in the Civil Service Regulations to the extent of its inconsistency with any of the provisions of the 1960 Regulations would have any effect. This was obviously intended to ensure that whatever better benefits were available to the employees of the Board would be protected even if the Civil Service Regulations were inconsistent with the Board's Regulations.

38. Clause (ii) specifically provided that the provisions made in the Regulations would be in addition to and not in derogation of the provisions in the Civil Service Regulations as amended from time to time by the Government of Tamil Nadu. The import of this clause was that, except as otherwise provided in the 1960 Regulations, with regard to matters not covered by the Civil Service Regulations, the 1960 Regulations would have to be read additionally and not so as to derogate from the Civil Service Regulations. In other words, the intention declared by clause (ii) is that the persons covered by the Civil Service Regulations would be entitled to the benefits thereunder and also to the benefits flowing from the 1960 Regulations.

39. In 1995, however, the Board proposed to amend Regulation 9 as it stood. The perambulatory portion in the Board proceedings [B.P. (FB) No. 7 dated 17-2-1995] clearly sets forth the reasons, which motivated the Board to amend Regulation 9. This became necessary, because in the period after the 1960 Regulations were first operative, the State Government had replaced the then existent Civil Service Regulations with the Tamil Nadu Pension Rules and the Tamil Nadu Pension Rules, 1978. Correspondingly, by the 1995 Amendment, the expression "Civil Service Regulations" in Regulation 9 was replaced by "the Tamil Nadu Pension Rules" and "the Tamil Nadu Pension Rules, 1978". Regulation 9(ii) was also amended on the same lines. However, there were no other changes either formal or substantive in Regulation 9. The amended

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Regulation 9 took effect from the dates on which the Tamil Nadu Pension Rules and Tamil Nadu Pension Rules, 1978 were brought into force (i.e. 18-7-1976 and 1-1-1979 respectively).

40. In our view, the amended Regulation 9 only makes explicit with reference to the Tamil Nadu Pension Rules and Tamil Nadu Pension Rules, 1978 what was already provided for in the unamended Regulation 9, which referred to the Civil Service Regulations. A reading of the Board proceeding [B.P. (FB) No. 7 dated 17-2-1995] makes it clear that since the formation of the Board on 1-7-1957 till the 1960 Regulations came into force, the employees of the Board were governed only by the provisions of the Civil Service Regulations inter alia with respect to quantum of pension, death-cum-retirement gratuity. After the Board framed its 1960 Regulations and the Family Pension Regulations, 1964, the provisions of these Regulations, which were not inconsistent with the Civil Service Regulations, were followed 'in addition to the provisions of the Civil Service Regulations with respect to matters not specifically governed by the Board's Regulations'.

41. The said Board proceedings also make it clear that once the Civil Service Regulations were replaced by the Tamil Nadu Pension Rules and the Tamil Nadu Pension Rules, 1978, those were followed for settling the terminal benefits of retiring employees of the Board. Similarly, according to the Board proceedings, the amendments made from time to time in the aforesaid Rules of the State Government were also being applied to the retiring employees of the Board "in the light of the saving provision contained in Regulation 9 of the 1960 Regulations". As we have previously discussed, the Board proceedings indicate that the 1995 Amendment to Regulation 9 was only intended to take into account the State Government's action of replacing the Civil Service Regulations with the Tamil Nadu Pension Rules and the Tamil Nadu Pension Rules, 1978.

42. The real question before us is: Whether the Board could have followed the State Government's pension amendments by merely changing Regulation 9. It appears to us that the decision taken by the Board to amend its own Pension Rules and bring it in line with those applicable to the government servants was per se unexceptionable;

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however, this could not have been achieved by a mere amendment in Regulation 9 as seems to have prevailed in the opinion of the Board.

43. Ms. Jaising is right in her contention that the purpose and purport of Regulation 9 was to ensure, firstly, that the State Government employees taken over in the service of the Board were not prejudiced with regard to their conditions of service, particularly pension and death-cum-retirement gratuity. Secondly, the saving clause ensures that with regard to matters which were not covered by the State Government Rules but covered by the Board's Regulations, the benefit covered under the Board Regulations would be in addition to and not in derogation of what was already available in the Civil Service Regulations. It was open to the Board in exercise of its statutory powers under Section 79(c) of the Electricity (Supply) Act, 1948 to amend its Pension Regulations in such manner as to bring it precisely in line with the Tamil Nadu Government Rules with regard to pension and other benefits as applicable to the State Government employees. Instead of expressly amending the which was merely a saving clause intended to insulate the employees against erosion of their benefits granted in the provisions."

In that case, the Board revised the maximum qualifying service for entitlement to pension by increasing it from 30 years to 33 years. The Supreme Court held that where a benefit is granted under the 1960 Regulations, it cannot be taken away by the Board's decision without amending the Regulations. However, it held that if by a Board's decision certain benefits were granted, then the Board could withdraw the benefits by another decision. In that case, originally, the maximum permissible commutation of pension was increased to 40% by a Board's Proceedings. Thereafter, it was reduced to 33-1/3% by another Proceedings. The change made by the subsequent Board Proceedings actually brought the level of commutation to what was originally given as per the 1960 Regulations. This reduction was upheld.

9. Learned Additional Advocate General is correct in his contention that the provisions of the Civil Service Regulations could be followed in respect of matters not specifically governed by the Board's Regulations. But, where matters are specifically governed by the Board's Regulations, then the pensioners of the Electricity Board were not entitled to rely on Regulation 9 for applying the Civil Service Regulations to them. The Board's Regulations provide for pension. The rules regarding the manner

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in which the pension is to be calculated have been amended from time time. The quantum of pension has also been increased or revised from time to time by various Board Proceedings, even in the absence of any corresponding Government Order revising the pension for the Government employees. That is, the Board has given many benefits to its employees, pursuant to various settlements, which the Government has not given to its employees. What Regulation 9 directs is that the provisions of the Regulations shall not be inconsistent with the Civil Service Regulations. The appellants are unable to show any regulation which mandates the automatic adoption of any modification brought in the Pension Rules. Therefore, it is clear that it is for the Board to decide to what extent it should adopt the benefits given to the Government Servants by the Government. It is also relevant to note that G.O. Ms. Nos.272 and 273 were issued only in order to comply with the orders passed by the Tamil Nadu Administrative Tribunal. If the Chairman of the Electricity Board was of the opinion that on a total consideration of the financial capacity of the Board and also the comparative scales of pension received by the Board's pensioners and the Government pensioners it was not necessary to adopt G.O. Ms. Nos.272 and 273, then we cannot insist on such adoption. The Regulations also do not provide for such automatic adoption.

10. In our opinion, Regulation 9 has no application to this case. Regulation 9(i) protected the Board employees' entitlement to better benefits as per the Board Regulations even if the Civil Service Regulations were otherwise and less beneficial to them. Whereas, Regulation 9(ii) provides that the provisions in the 1960 Regulations would be followed as long as they were not inconsistent with the Civil Service Regulations, but with regard to certain matters not specifically governed by the Board's Regulations, the provisions of the Civil Service Regulations would apply. We do not think that the effect of Regulation 9 requires the Board to adopt word for word, the Government Orders passed from time to time with regard to pension by the Government either on its own accord or in compliance to the orders obtained by the employees from the Tribunal or this Court. If Regulation 9 does not apply, then it is clear that the Board has the discretion to decide whether any Government Order has to be adopted and Board's Proceedings may be issued in accordance with it.

11. From the counter filed by the respondents, it is seen that the Chairman has taken note of the fact that the Government's decision to treat Dearness Allowance and Additional Dearness Allowance sanctioned upto 30.9.1987 as Dearness Pay for the purpose of calculation of pensionary benefits in respect of those who retired or died on or after 1.10.1987 and extending the

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same benefits to others, has not been allowed to the employees in other statutory bodies like the Tamil Nadu Water Supply and Drainage Board, and that the employees of the Electricity Board are getting higher scale of pay and pension than the Government staff and that the decision of the Board with regard to these two Government Orders had also been intimated to the Pensioners' Association. It is also seen from the counter that the probable number of beneficiaries that would be covered if those two Government Orders are to be implemented, would be in the range of 6,241. There is dispute regarding this number, but there is no dispute that the numbers run into thousands. The financial commitment to the Board for payment of arrears of pension/family pension would be in the range of over Rs.31 crores and the approximate monthly commitment would be around Rs.31 lakhs. The counter also refers to the fact that the because of financial constraints, an earlier Government Order, viz. G.O. Ms. No.200, Finance dated 18.5.1999 was not made applicable to the pensioners. It is clearly stated that the Board is not in a position to implement G.O. Ms. Nos.272 and 273.

12. In this connection, we might refer to (2005) 6 S.C.C. 754 [State of Punjab vs. Amar Nath Goyal], where the Government employees claimed that they were entitled to higher amount of death gratuity and retirement gratuity consequent to the merger of a portion of Dearness Allowance with the basic pay. It was submitted on behalf of the Union of India and the respective State Governments that financial constraints impelled them to restrict such payments to employees who had retired or died on or after 1.4.1995. The Supreme Court rejected the argument on behalf of the employees that financial implication cannot be a reason for limiting the benefits to certain employees and such a policy would be irrational or arbitrary. The Supreme Court observed, "Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government at the Centre or the State level .....". It was held as follows :

> "The Central Government took a conscious stand that the consequential financial burden would be unbearable. It, therefore, chose to taper down the financial burden by making the benefits available only from 1.4.1995. It is trite that, the final recommendations of the Pay Commission were not ipso facto binding on the Government, as the Government had to accept and implement the recommendations of the Pay Commission consistent with its financial position. This is precisely what the Government did. Such an action on the part of the Government can neither be characterised as irrational, nor as arbitrary so as to infringe Article 14 of the Constitution."

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The importance of the financial implications has been considered in various decisions and this was referred to by the Supreme Court. So, the conclusion is, if the authority takes note of the probable monetary burden while taking a policy decision, it can neither be said to be arbitrary nor unreasonable.

13. Therefore, in view of the fact, Regulation 9 cannot be applied; there is no duty to adopt the Government Orders automatically; the Chairman of the Electricity Board has the discretion to decide whether to adopt a certain Government Order in such matters, either wholly or with modification or not to adopt; the settlement has no application; and above all, the financial implication is so huge as to make the implementation unviable, no mandamus can be issued as prayed for and hence, we set aside the order of the learned single Judge.

(Judgment of the Court was delivered by
The Hon'ble The Chief Justice)

For the reasons stated above the Writ Appeals are allowed, and the impugned Judgment and order of the learned single Judge is set aside. Writ Petitions stand dismissed, with no order as to costs. Consequently, WAMP.Nos.4982, 4983, 4987, 4990 of 2004 and W.V.M.P. Nos.7891 to 7894 of 2004 are closed.

ab/

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government,
State of Tamil Nadu,
Energy Department,
Fort St George, Chennai 9.

2. The Chairman, Tamil Nadu
Electricity Board,
Anna Salai, Chennai 2.

+ 1 cc to Mr.V. Radhakrishnan, Advocate SR No.5369

+ 1 cc to Mr.R. Parthiban, Advocate SR No.5344

+ 2 ccs to Mr.A.L. Namasivayam Advocate SR No.5415

+ 1 cc to the Government Pleader SR No.5077

VC(CO)
SR/20.3.2006

WA.Nos.2699, 2700, 2703,
2704 and 2706 of 2004

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